

**United States Department of the Interior
Bureau of Land Management**

**Decision Record
Environmental Assessment
DOI BLM CAD 0002012-0001**

December, 2011

**North Sky River – Right of Way
Application for Access Roads**

Location: Township 29 South Range 35 East, Township 30 South Range 37 East, Township 20 South Range 36 ½ East, Township 30 South Rand 36 East, and Township 30 South Range 30 South SBM.

Applicant/Address: *North Sky River Energy, LLC
505 14th Street, Suite 310
Oakland, CA 96412*



Ridgecrest Field Office
300 South Richmond Road
Ridgecrest, CA 93555
760-384-5400

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1. Introduction

It is the decision of the Bureau of Land Management (BLM) to approve the issuance of a right-of-way (ROW) grant to North Sky River Energy, LLC (NSRE) for access across public lands. This grant is in response to the application submitted by NSRE on December 9, 2010 (with subsequent revisions on December 13, 2010, January 28, March 15, July 20, and September 16, 2011). The BLM did not include the North Sky River Wind Energy project as part of the analyzed action because it is not a connected action. Given the availability of an alternative private route, which is analyzed as Alternative B in the EA, NSRE is expected to go forward with the North Sky River Wind Development regardless of outcome of the BLM decisions. Kern County evaluated the private land access road alternative in their Environmental Impact Report for the North Sky River Wind Development that was prepared pursuant to the California Environmental Quality Act. The road improvements included within the proposed action will provide benefits independent of the North Sky River Wind Development, including all weather gravel that will provide dust control, stormwater control measures to reduce erosion, and gating of roads to reduce unauthorized motor vehicle access to the Pacific Crest Trail.

Bureau of Land Management Purpose and Need for the Proposed Action

In accordance with Title V of the Federal Land Policy and Management Act (FLPMA) (43 United States Code [USC] 1761) (Section 103 (c)), public lands are to be managed for multiple use that takes into account the long-term needs of future generations for renewable and nonrenewable resources. The Secretary of the Interior is authorized to grant ROW on public lands for systems of generation, transmission, and distribution of electric energy (Section 501 (a) (4)). Taking into account the BLM's multiple use mandate, the purpose of the proposed action is to respond to a ROW application submitted by NSRE for access roads and underground electrical transmission lines to be constructed and operated on public lands

administered by the BLM in compliance with FLPMA, BLM ROW regulations, and other applicable federal laws and policies.

The BLM is considering NSRE's proposed action under the agency's authority to authorize ROW grants under Title V of the FLMPA (43 USC 1761). Additional policy direction is provided by Executive Order 13212, dated May 18, 2001, which directs federal agencies to act expediently and in a manner consistent with applicable laws to increase the production and transmission of energy in a safe and environmentally sound manner. Further direction is provided by Department of Interior Secretarial Order 3285A1, dated March 11, 2009, as amended February 22, 2010, which states, "Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities."

2. Description of the Project

2.1 BLM's Selected Alternative

2.1.1 Access Road Segments

The NSRE Access Road ROW request includes 4 segments described as follows:

Segment A. Segment A consists of Segment A1 for which no improvements are proposed, and Segment A2, a new road section.

Segment A1

This sub-segment is comprised of the following BLM managed lands:

- Township 30 South, Range 37 East, Sections 20, 22, 27;
- Township 30 South, Range 36 ½ East, Section 24;
- Township 30 South, Range 36 East, Sections 22, 24, 28, and 30.

Segment A1 starts at State Route 14, this segment to access NSRE-owned property turns west onto Jawbone Canyon Road (JCR). At this location, JCR is paved, well-maintained, and would require no additional improvements because this road segment was improved as part of the Los Angeles Department of Water and Power (LADWP) Pine Tree Project. After approximately 6.2 miles, JCR turns north, while the proposed NSRE access route continues southwest along the road operated by LADWP. After 3.8 miles, the route reaches NSRE-owned property and veers northwest.

As shown on Figure 1-1 and noted above, the approximate 10-mile distance along JCR and the LADWP road to the NSRE property line require no improvements. Use of the existing road will require a 50-foot-wide ROW for the duration of the ROW agreement.

Segment A2

This sub-segment is located entirely within BLM managed lands in Township 30 South, Range 36 East, Section 30 (Figure 1-1).

The 1,132 linear feet of new road surface within Segment A2 is necessary to avoid steep slopes and provide for safer driving conditions. The new road section will be designed as a

24 foot-wide all weather gravel road and will require a 500 foot-wide ROW for the duration of the ROW agreement.

Disturbance acreages associated with Segment A1 and A2 are provided in Table 2-1.

Segment B. This segment is located entirely within BLM managed lands in Township 30 South, Range 35 East, Section 26 (Figure 1-1).

This segment will consist of up to 954 linear feet of new road and the improvement and realignment of 10,151 feet of existing roads to access private property owned by NSRE. The existing roads will be realigned to avoid steep slopes, sharp turns and provide for safer driving conditions.

The 10,151 feet of existing roads within this segment will be improved, widened and in some areas realigned to a 24 foot-wide all weather gravel roads. The 954 linear feet of new road will be constructed as a 24 foot-wide all weather gravel road.

The new and improved road sections within Segment B will be designed as 24 foot-wide all weather gravel roads and will require a 500 foot-wide ROW for the construction period for the duration of the ROW agreement. The road improvements would be engineered to provide safer driving conditions. As part of the road improvements in Segment B, 3.12 acres of the existing unimproved roadways would be restored (as described in Table 2-1) in order to provide a single, all weather travel route, and this segment would include a net increase of 2.18 acres of road surface.

This segment will also include installation of 6,900 feet of underground electrical transmission and fiber optic communication lines. The 6,900 feet of underground fiber optic and 34.5 kilovolt (kV) electrical transmission and communication lines will be buried inside a trench located entirely within the area disturbed by the existing road realignment and new road construction. The trench will be up to 2 feet wide, 4 feet deep and 6,900 feet long. Trenching for underground transmission and communication lines will not result in new disturbance within BLM managed lands.

Segment C. This segment will use existing roads with limited improvements to access private property and is comprised of BLM managed lands in Township 30 South Range 35 East Section 28 (Figure 1-1). Up to 3,141 linear feet of existing road would be improved and widened to a 12 foot-wide all weather gravel road.

The existing access road will be graded to a width of 12 feet and covered with an all-weather gravel surface and will require a 100 foot-wide ROW for the duration of the ROW agreement. Disturbance acreages associated with Segment C are provided in Table 2-1.

Segment D. This segment will use existing roads, requires no improvements to access private property owned by NSRE and is comprised of BLM managed lands in Township 29 South Range 35 East, Section 26.

As shown on Figure 1-1, a small portion of an existing access road would be required to transport water to NSRE private property from existing wells located on private property in

Section 33 of Township 29 South Range 35 East, via water delivery trucks. The trucks would travel on JCR and a portion of the route would traverse BLM-managed land. Segment D is comprised of 5,517 linear feet of existing road that will not result in ground disturbance on BLM-managed land. The water wells are also located on private property and therefore are not part of this request or subject to BLM review. Water delivery trucks are anticipated to have a capacity of 6,000 gallons. Approximately 60 total water delivery truck trips would be required during construction of the proposed action and a maximum of one water delivery truck trip per month is expected to be needed during operations. Use of the existing road will require a 50-foot-wide ROW for the duration of the ROW agreement.

2.3.1 Underground Transmission Line and Fiber Optic Communication Lines

Approximately 6,900 linear feet of trenching would be required to install 34.5 kV underground electrical transmission lines and fiber optic communication lines that traverse BLM lands. Underground transmission line trenches would be no more than 48 inches (4 feet) deep and would be approximately 24 inches (2 feet) wide.

Trenching equipment will be used to excavate trenches parallel to the access roads. Optical fiber optic communication (SCADA) lines will be installed in the same trenches as the underground transmission lines. In some areas trenching may be wider to accommodate bundled 34.5 kV line, but in no cases will trenching occur outside the areas that would be disturbed by road construction and improvement activities.

Underground transmission and communication lines will be placed (and packed in sand or native materials depending on the soil properties at the proposed action site) within the trenches and covered to protect the cables from damage or possible contact. The extent of open trench at any given time will be minimized to only those distances necessary to conduct work. Once electric cables and fiber-optic communications cable have been placed in the trench, the trench will be backfilled with sand bedding and excavated trench material as soon as cable integrity has been tested.

3. Errata

Segment A1 in the project description did not include a small portion of the existing Jawbone Canyon Road that will be utilized, but not improved and should read as follows:

Segment A1

This sub-segment is comprised of the following BLM managed lands:

- Township 30 South, Range 37 East, Sections 20, 22, 27;
- Township 30 South, Range 36 ½ East, Section 24;
- Township 30 South, Range 36 East, Sections 22, 24, 28, and 30.

The following section in the EA did not include information regarding a specific resource and the section from the EA should read as follows:

4.5 CULTURAL RESOURCES

4.5.1 Alternatives Analysis

Alternative A: Proposed Action

Based on the results of the Class III cultural resource survey and addendums, no known NRHP potentially eligible resources would be affected by the proposed action. As part of the proposed action, all proposed ground disturbance would be sited more than 100 feet from any potentially significant cultural resources, with the exception of 500 feet of proposed ROW. Within Segment C of the proposed action, 500 feet of ROW would intersect a cultural resources site, S-7. NSRE will implement the cultural resources avoidance and protection measures described in Chapter 2 to avoid impacts to cultural resources occurring within 100 feet of the proposed action ROW and to address discovery of previously undetected cultural resources during ground disturbing activities. The measures include a cultural resources capping plan, and capping will include installation of geo-textile fabric, placement of an engineered soil cap (using culturally clean soil) to handle load bearing requirements and protect the resource, and placement of aggregate as a final road surface. With implementation of these measures, the proposed action would result in no adverse effects to cultural resources.”

4. Decision

Based on the information contained in the NSRE EA, supporting project documents incorporated by reference, the approval of the ROW identified in the Proposed Action will not have significant environmental impacts. The CDCA Plans General Guidelines (p.11) recognize the need for access roads across public lands to permit use of State and privately owned lands and to permit authorized developments on public lands. The public lands in the proposed ROWs are classified as Multiple-Use Class L (Limited), I (Intensive), and portions are on lands designated as unclassified in the CDCA. The Proposed Action is in conformance with the existing CDCA Plan by allowing for access to private parcels over public lands and meets the BLM’s Purpose and Need by providing access to private lands via the most environmentally sensitive manner.

Under Federal law, the BLM is responsible for approving ROW grant applications to determine whether and to what extent to authorize proposed projects such as access roads, transmission lines, and other appurtenant facilities on land it manages. NSRE has applied for a ROW from the BLM pursuant to Federal law and regulations as described earlier and based on the information in the EA, the FONSI, the Project record, and consultation with BLM staff, I have decided to approve the Proposed Action (see description above), which includes four access road segments and 6,900 feet of electrical transmission line and fiber optic lines. The total approved ROW for the Refined Project is approximately 178 acres.

All mitigation measures and Environmental Protection Measures identified in the EA are adopted by this decision. These measures can be found in Chapters 2, 3, and 4 of the EA.

5. Alternatives Considered

The alternatives considered in the NSRE EA included the Proposed Action (Alternative A), a Private Land Access (Alternative B), and the No Action Alternative (Alternative C). A full description of each alternative is available on pages 2-1 thru 2-19 in the EA.

6. Decision Rationale

The Selected Alternative addresses the purpose and need to respond to the ROW application submitted by NSRE for access roads and underground electrical transmission lines to be constructed and operated on public lands administered by the BLM in compliance with FLPMA, BLM ROW regulations, and other applicable federal laws and policies. The BLM is considering NSRE's proposed action under the agency's authority to authorize ROW grants under Title V of the FLMPA (43 USC 1761).

The effects of using and constructing the access roads to NSRE's property were analyzed in the EA and the granting of the ROW is in compliance with all applicable lands use plans. The use of an existing improved road surface and the construction of access roads have been designed and analyzed so that the Selected Alternative would not adversely affect threatened, endangered, or special status species.

The Private Land (Alternative B) access route was not selected because this alternative would result in numerous impacts to vegetation communities, soil, water quality, and air quality resources along the 28 mile route. Implementation of Alternative B would result in up to 161 acres of temporary disturbance and up to 33 acres of new road surface on private lands. The extensive modifications, grading and construction that would be required to improve the route would exceed those of the Selected Alternative.

One letter was received during the 30 day comment period on the EA and FONSI. Attachment 1 contains the BLM's response to the comments received. Comments provided did not identify an error of law, a demonstrable error of fact, or that the analysis contained in EA Number DOI BLM CAD 0002012-0001 failed to consider a substantial environmental question of material significance to the action for which the environmental analysis was prepared.

7. Finding of No Significant Impact

One letter was received during the 30 day comment period on the EA and FONSI. That letter did not provide new information, nor did it identify a flaw in the assumptions, analysis, or data that would alter the environmental analysis disclosed in the EA or the conclusions documented in the FONSI. It is my determination that the Selected Alternative will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects have been identified that meet the definition for significance in context or intensity as defined in 40 CFR 1508.27. Therefore an environmental impact statement will not be prepared.

8. Consultation and Coordination

8.1 United State Fish and Wildlife Service

The BLM has determined, and has shared their determination with the USFWS, that the project would result in no affects to desert tortoise or California Condor or their designated critical habitat. As directed under the Endangered Species Consultation Handbook (1998) the BLM bears the responsibility of the no effect determination and has informed the USFWS in a memo dated December 14, 2011.

8.2 Native American Consultation/Coordination and Section 106 Consultation/Coordination

The BLM initiated tribal consultation for the project by letter on June 24, 2010, to identify properties of religious and cultural significance to the Tribes. The following Tribes or tribal organizations were invited to be consulting parties:

The Monache Intertribal Council
The Kern Valley Indian Council
The Nuui Cunni Interpretative Center
The Tubatulabals of Kern Valley

The BLM has not received any responses from the above mentioned tribal representatives and has not been asked to provide any further information or respond to requests for government-to-government consultation.

The cultural resources inventory report was completed in January 2011 with an addendum report provided in May of 2011. The report concluded and the BLM has since made the determination that the project would have no adverse effect on any cultural resources eligible for the National Register of Historic Places. A small portion of Segment C, an access road that is to be improved, but not widened, does cross a potentially eligible site. However, implementation of the Environmental Protection measures, specifically Cultural-1 through Cultural-4, will result in those impacts not being adverse and construction of an engineered soil cap will protect the integrity of the site. Consultation regarding the impacts will be covered per the Protocol Agreement and in accordance with all current laws and policies.

9. Public Involvement

The public involvement process for this included a 30 day comment period on the EA and unsigned FONSI that was posted on the BLM's website on November 17, 2011. The FONSI was included to provide the public the information that the BLM was using to determine any significant impacts.

One comment letter has been received and the responses to those comments are included in Attachment 1.

10. Plan Consistency

The proposed action would occur on BLM lands managed under the CDCA Plan of 1980 (as amended). The CDCA Plan Guidelines recognized the need for motorized-vehicle access across public lands to permit use of State and privately owned lands and to permit authorized developments on public lands. The CDCA Plan indicates in Table 1 that, "New roads and ways may be developed under right-of-way grants or pursuant to regulations or approved plans of

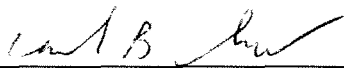
operation.” The public lands in the proposed ROWs are classified as Multiple-Use Class L (Limited), I (Intensive), and portions are on lands designated as unclassified in the CDCA.

As the Proposed Action would provide for access to private lands and the CDCA Plan recognized this need, the action is consistent with the intent and management directions within the Plan.

11. Final Agency Action

11.1 Right-of-Way Authorization

Based on the foregoing, it is my decision to approve the ROW grants to NSRE, subject to the terms, conditions, stipulations, Plan of Development, and environmental mitigation measures developed by the Department of the Interior and reflected in this Decision Record. This decision is effective on the date this Decision Record is signed.



Carl B. Symons Acting Field Manager
Bureau of Land Management
Ridgecrest Field Office

12/21/2011

Date

ADMINISTRATIVE REMEDIES:

Administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410 (a) - (c)). Other than the applicant/proponent for the right-of-way action, in order to be considered a "party to the case" the person claiming to be adversely affected by the decision must show that they have notified the BLM that they have a "legally cognizable interest" and the decision on appeal has caused or is substantially likely to cause injury to that interest (See 43 CFR § 4.410(d)).

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way application. All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-Way decisions that remain in effect pending an appeal are considered as "in full force and effective immediately" upon issuance of a decision. Thus, this decision is now in effect.

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who

made the decision in this office by close of business (4:30 p.m.) not more than 30 days after the date of service. Only signed hard copies of a notice of appeal that are delivered to:

Bureau of Land Management
Ridgecrest Field Office
300 S. Richmond Road
Ridgecrest, California 93555

will be accepted. Faxed or e-mailed appeals will not be considered.

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

HOW TO FILE AN APPEAL

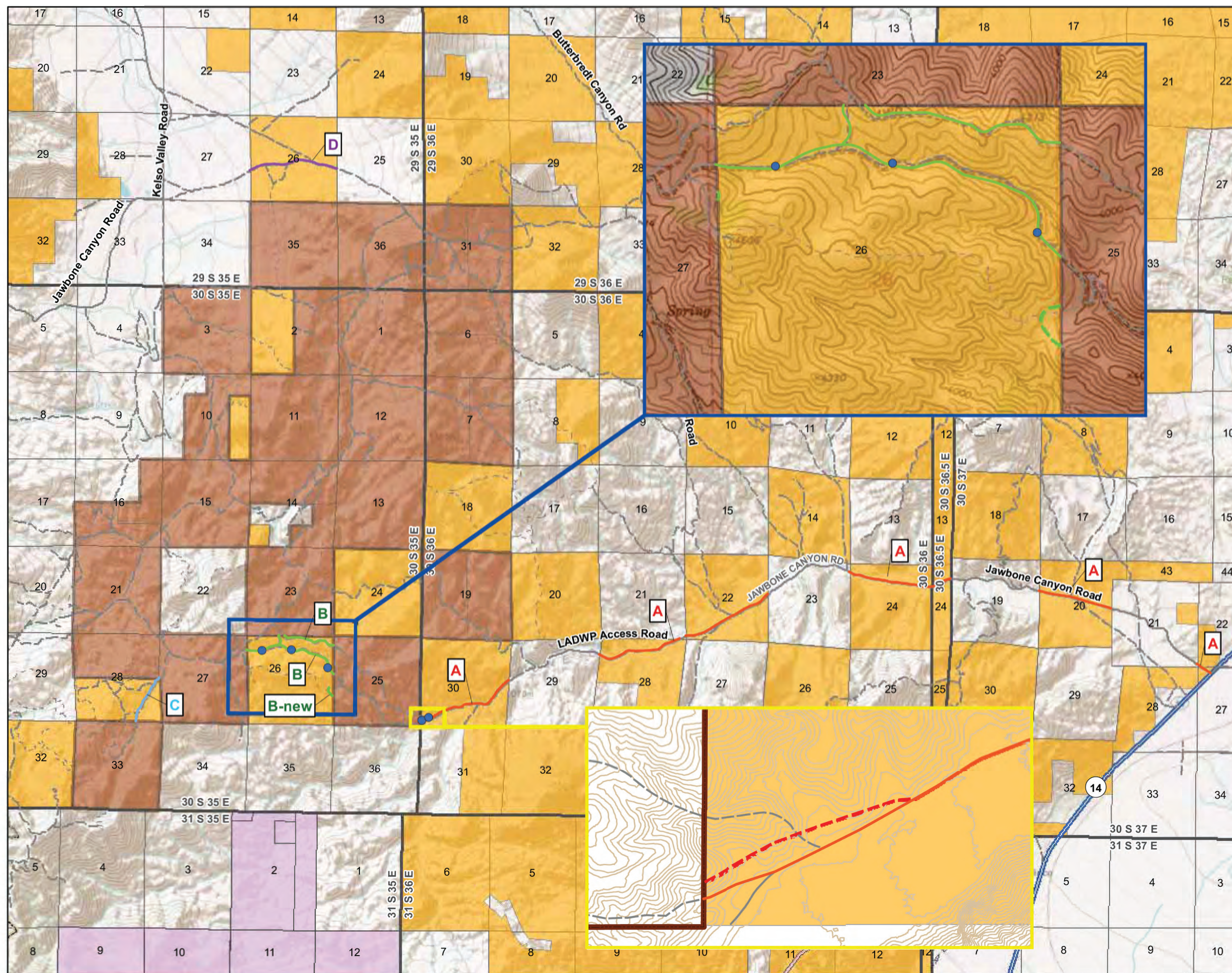
See the attached Form 1842-1 for complete instructions on Filing an Appeal.

CONTACT INFORMATION

For additional information contact:

Field Manager
Ridgecrest Field Office
Bureau of Land Management
300 S. Richmond Road
Ridgecrest, CA 93555
(760) 384-5400
Or Jeff Childers, Project Manager, CDDO Moreno Valley, (951) 697-5308

Attachment: Attachment 1, Figure 1-1



Legend

- Creek Crossing
- Proposed Access Roads on BLM Land**
 - Existing Road No Improvements Needed (Segment A)
 - - - Existing Road to be Improved (Segment A)
 - Existing Road to be Improved and to be Co-located with Underground Transmission Line (Segment B)
 - - - New Access Road to be Co-located with Underground Transmission Line (Segment B)
 - Existing Access Road to Gen-tie to be Improved (Segment C)
 - Existing Road No Improvements Needed (Segment D)
- Existing Roads**
 - Paved Road
 - - - Dirt Road (may require 4-Wheel Drive)
 - - - No Access – Trail or Accessible by ATV
 - State Route 14
 - Pacific Crest Trail
 - North Sky River Boundary
 - LADWP Land
 - Bureau of Land Management
 - Township And Range
 - Sections

FIGURE 1-1
Proposed Access Roads on BLM Lands
 North Sky River Energy, LLC
 October 2011